

§ 1954.2 Monitoring system.

(a) To carry out the responsibilities for continuing evaluation of State plans under section 18(f) of the Act, the Assistant Secretary has established a State Program Performance Monitoring System. Evaluation under this monitoring system encompasses both the period before and after a determination has been made under section 18(e) of the Act. The monitoring system is a three phased system designed to assure not only that developmental steps are completed and that the operational plan is, in fact, at least as effective as the Federal program with respect to standards and enforcement, but also to provide a method for continuing review of the implementation of the plan and any modifications thereto to assure compliance with the provisions of the plan during the time the State participates in the cooperative Federal-State program.

(b) Phase I of the system begins with the initial approval of a State plan and continues until the determination required by section 18(e) of the Act is made. During Phase I, the Assistant Secretary will secure monitoring data to make the following key decisions:

- (1) What should be the level of Federal enforcement;
- (2) Should plan approval be continued; and
- (3) What level of technical assistance is needed by the State to enable it to have an effective program.

(c) Phase II of the system relates to the determination required by section 18(e) of the Act. The Assistant Secretary must decide, after no less than three years following approval of the plan, whether or not to relinquish Federal authority to the State for issues covered by the occupational safety and health program in the State plan. Phase II will be a comprehensive evaluation of the total State program, drawing upon all information collected during Phase I.

(d) Phase III of the system begins after an affirmative determination has been made under section 18(e) of the Act. The continuing evaluation responsibility will be exercised under Phase III, and will provide data concerning the total operations of a State program to enable the Assistant Secretary to

determine whether or not the plan approval should be continued or withdrawn.

(e) The State program performance monitoring system provides for, but is not limited to, the following major data inputs:

- (1) Quarterly and annual reports of State program activity;
- (2) Visits to State agencies;
- (3) On-the-job evaluation of State compliance officers; and
- (4) Investigation of complaints about State program administration.

§ 1954.3 Exercise of Federal discretionary authority.

(a)(1) When a State plan is approved under section 18(c) of the Act, Federal authority for enforcement of standards continues in accordance with section 18(e) of the Act. That section prescribes a period of concurrent Federal-State enforcement authority which must last for at least three years, after which time the Assistant Secretary shall make a determination whether, based on actual operations, the State plan meets all the criteria set forth in section 18(c) of the Act and the implementing regulations in 29 CFR part 1902 and subpart A of 29 CFR part 1952. During this period of concurrent authority, the Assistant Secretary may, but shall not be required to, exercise his authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act with respect to standards promulgated under section 6 of the Act where the State has comparable standards. Accordingly, section 18(e) authorizes, but does not require, the Assistant Secretary to exercise his discretionary enforcement authority over all the issues covered by a State plan for the entire 18(e) period.

(2) Existing regulations at 29 CFR part 1902 set forth factors to be considered in determining how Federal enforcement authority should be exercised. These factors include:

- (i) Whether the plan is developmental or complete;
- (ii) Results of evaluations conducted by the Assistant Secretary;
- (iii) The State's schedule for meeting Federal standards; and
- (iv) Any other relevant matters.

(29 CFR 1902.1(c)(2) and 1902.20(b)(1)(iii).